

**REQUEST FOR PROPOSALS
RFP**

Issue Date: November 7, 2006 RFP#: 165-04-12-2006-209-38

Title: State Fire Marshal Compliance/Inspection Tracking System

Commodity Code: 220-34 Logging Devices, Electronic (Long-Range Data Collection and Recording for Use at a Remote Location)

Issuing Agency: Virginia Department of Housing and Community Development
501 North 2nd Street
Richmond, Virginia 23219

Where work will be performed: Richmond, Virginia

Period of Contract: Date of award through a one-year period

Contract Renewal Period: Up to one year following initial contract period

Sealed proposals for furnishing the services described herein will be received until: 4:00 PM, January 9, 2007

All inquiries for information should be directed to: Emory Rodgers
Deputy Director for Housing
Telephone: 804-371-7151

OPTIONAL PREBID/PREPROPOSAL CONFERENCE: An optional prebid/preproposal conference will be held at **November 21, 2006 10:00 a.m.** at the **Department of Housing and Community Development**. The purpose of this conference is to allow potential bidders/offers an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a bid/proposal, bidders/offers who intend to submit a bid/proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

SEND ALL PROPOSALS DIRECTLY TO ISSUING AGENCY. IF PROPOSALS ARE HAND DELIVERED, DELIVER TO: VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 501 N. 2ND STREET, RICHMOND, VIRGINIA 23219

In compliance with this Request for Proposals and to all conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiations.

Name and Address of Firm:

Zip Code: _____

DATE:_____

By:_____

Title:_____

Tel: (_____) _____

FEI/FIN NO. _____

Fax: (_____) _____

E-mail: _____

Web Address:_____

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I. Background and Purpose:

The Department of Housing and Community Development (DHCD) is proposing to increase agency efficiency and realize cost-savings by developing and implementing a new integrated, automated, Web-enabled electronic field inspection and management reporting system for the State Fire Marshal's Office (SFMO) with Geographic Information Systems (GIS) capability that would:

1. Combine existing inspection and data base system, explosives safety data base, and other data collection systems currently used by the SFMO
2. Reduce the time required for fire inspectors to complete a building inspection;
3. Increase the number of inspections completed each year;
4. Streamline the data collection and reporting process for inspectors;
5. Reduce the time needed for inspectors to complete the required paperwork;
6. Enhance DHCD's ability to address and improve building and fire safety in Virginia.
7. Enhance the ability of SFMO to produce quarterly and annual reports for mandated measurement targets.
8. Provide a means for clients to pay for inspections and permits on-line.
9. System shall include a means to interface with other agency programs, including the Training and Certification Office's blaster certification database, which includes background clearance information storage, explosives storage and use permits, firework permits, modular seal fees, license revenue and training courses on-line and SFMO programs as needed.
10. Provide services to convert and integrate existing historical data in current databases into new system.
11. Combine existing State Building Code Office inspection, compliance and billing systems into the new system for site and factory inspections associated with Manufactured Housing and Industrialized Building Programs.
12. System shall include Custom Programming capabilities to develop other applications for DHCD entities other than SFMO from existing platform.

The SFMO currently has a data base and inspection system, an explosives safety data base system for issuing and tracking permits issued for the use and storage of explosives and fireworks, and several other data collection and tracking systems. Currently, inspector's complete inspections, go to large cars or vans, turn on laptops (large) and printers. Reports are typed, printed and left on site. When an inspector returns to office and docks the laptop, information is downloaded into the SFMO database system. The use of the larger more expensive vans or cars is necessary to provide adequate space for equipment when issuing reports. Permits for explosives and storage of fireworks are issued and tracked through a separate data base system that is not accessible to the regional SFMO field offices. Fireworks use permits are issued by the SFMO field offices and are not part of the database.

The current database system was developed in house and is used to complete all weekly, monthly and other performance reports as well as track inspections and issue inspection reports. The current system is used for management of SFMO programs including inspections, setting goals, and budget planning. The database is a detailed database, but is old, requires constant attention to maintain, complicated to use and offers little flexibility to be expanded or to produce useful and timely data reports to validate performance and effective use of staff.

This proposal outlines a process that would enable DHCD to further evolve its vision of a new integrated, automated, Web-enabled electronic field inspection and management reporting system, including the capability for electronic (e) reporting to owners. A new system would provide the State Fire Marshal's

Office with more accurate and timely information, improve efficiencies in data management and would further enable participating inspectors and counties to complete their inspection obligations with greater effectiveness. Improving the efficiency of this process is critical and congruent with DHCD's goals within the performance-based management and accountability system implemented by the State.

II. Statement of Needs:

A. System Requirements

The proposed system will be tailored to match the SFMO business processes so that every screen streamlines work completed in the field. It will allow inspectors to work remotely, with little or no interruption, even when roaming in and out of service range. By utilizing wireless data services, the inspector can be connected to the SFMO database in real-time and can down-load or up-load critical time-sensitive data or can perform a database synch with the master database when the inspector gets back to the office.

The system will allow: (1) the generation of a daily inspection schedule for each inspector based on type of inspection, location of inspection, or other criteria; (2) the ability to transmit data directly to the SFMO database or synch with a master database; (3) the ability to access background or supporting information from the SFMO database.

The field hardware (computer system) will be lightweight, portable and hand-held, one that has a rugged casing which is sturdy enough to handle the rigors of fieldwork. These systems will be used by inspectors to carry out inspections in the field under a variety of adverse weather and environmental conditions. Each field system will be able to be inserted in a docking station, which will be located either at the main office or satellite station, where inspection information will be downloaded from the field system to the host computer or equipped with remote wireless service. The field system computers will be compatible with operating systems that use the Microsoft Windows Graphic User Interface (GUI).

The system will allow users to display their work assignments based on the inspections they are required to conduct during the workday. The system should allow users to search for specific inspections, and/or display a list of all inspections to which they have been assigned. Also, the system will allow users to enter required information to display the list of inspections. Inspectors should be able to key in their employee ID and display a list of all inspections they are scheduled for on a given day or period of time. The system will allow users to easily select and load inspection data for a particular inspection on their screen. The system will provide users with on-line support, which will give them assistance on the window, or screen in which they are working. The support section should link users to functions without having to leave the main screen. The system should have the ability to incorporate a list of "alerts" or "notes" onto the daily inspection listings so that the inspectors can be notified of particular issues with regard to a development. The system should have the ability to automate "notes" for the inspectors.

In addition, other the explosives and fireworks and other existing data bases will be integrated into this resulting in one data base relating to all tasks authorized or mandated by *The Code of Virginia*. The projected cost will include the SRS analysis and report, system development and implementation, new hardware such as computers, and software, training and technical support.

III. Delivery Requirements and Schedule

1. The Contractor shall work under the general supervision of the Director of the Department of Housing and Community Development, or his/her appointed designee.
2. The Contractor shall secure written permission from the Department of Housing and Community Development prior to taking on any projects in Virginia related to computer or technology related services, but outside the scope of activities of the DHCD.
3. Specific agreed upon tasks, products and deliverables within the contract period shall be completed on schedules approved by the Department of Housing and Community Development.
4. The Contractor, in consultation with the Department of Housing and Community Development, shall establish a mutually agreeable calendar of dates to deliver the services specified above.
5. The Department of Housing and Community Development, in consultation with the Contractor shall establish a payment schedule based on a mutually agreeable calendar of dates to deliver the services specified above.

IV. Contractor Qualifications

Minimal Contractor qualifications required for implementation of contract activities include:

Extensive experience in working with governmental agencies, preferably in housing, community and economic development related fields.

Extensive experience in assessing organizational structures of governmental agencies and evaluating their technology status, needs and capacities.

Extensive experience in providing technical assistance on a broad range of technology related issues, addressing problems and needs related to e-government systems.

V. Proposal Preparation and Submission Requirements

A. General Requirements

1. RFP Response: In order to be considered for selection, Offerors must submit a completed response to the RFP. One original and three copies of each proposal must be submitted to the Department of Housing and Community Development. No other distribution of the proposal shall be made by the Offeror.

2. Proposal Preparation: An authorized representative of the Offeror shall sign the proposal. All information requested must be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals that are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

a) Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

b) Proposals should be organized in the order in which the requirements are presented in this RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirements as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents that cross references the RFP requirements. Information that the Offeror desires to present that does not fall within the requirements of the RFP should be inserted at an appropriate place or attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration.

c) Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

d) Ownership of all data, materials and documentation originated and prepared for the state, pursuant to the RFP shall belong exclusively to the State and be subject to inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act, however, the Respondent must invoke the protection of Section 11-52 of the Virginia Public Procurement Act prior to or upon submission of the data or other materials, and must identify the data or materials to be protected and state the reasons why protection is necessary in Attachment C.

CRITICALITY OF REQUIREMENTS: As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.

TRADE SECRETS/PROPRIETARY INFORMATION: Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of § 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected including the section of the proposal in which it is contained and the pages numbers, and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. In addition, a

PROPOSAL ACCEPTANCE PERIOD: Any proposal in response to this solicitation shall be valid for 90 days. At the end of the 90 days the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

PROPOSAL ENVELOPE: The proposal envelope should provide the following information: Name of Offeror, Street or Box Number, City, State, Zip Code; and Solicitation Close Date and Time, Solicitation No., Solicitation Description, and name of Contract/Purchase Officer. If a solicitation response is not contained in an envelope as described above the Offeror takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. No other un-requested correspondence or other proposals should be placed in the envelope.

3. Oral Presentation:

Offerors, who submit a proposal in response to this RFP, may be required to give an oral presentation of their proposal to the Department of Housing and Community Development. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The Issuing entity will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

B. Specific Proposal Requirements:

1. Proposals should be as thorough and detailed as possible so that the Department of Housing and Community Development may properly evaluate the capabilities of the organization to provide the required goods/services. Offerors are required to submit the following items as a completed proposal:
 - a. The return of this complete RFP signed and filled out as required.
 - b. Complete Data Sheet
 - c. Written narrative statement to include:
 - (1) Experience in providing the goods/services described herein
 - (2) Names, qualifications and experience of personnel to be assigned to the project
 - (3) Resumes of staff to be assigned to the project

- d. Specific plans for providing the proposed services including:
 - (1) What, when, and how the services will be performed
 - (2) Timeframe for Completion
 - (3) System platform, configuration and scalability. Please define the minimum workstation requirements as well as optimum configurations
 - (4) User-interface
 - (5) Common intake and assessment process
 - (6) Tracking Client demographics, services, and outcomes
 - (7) Reporting and Querying
 - (8) Ability to customize system defaults and lookup tables
 - (9) Ability to integrate with other software products
 - (10) Custom Programming
- e. Proposed cost for services to be provided.

VI. Evaluation Criteria and Award Criteria

1.1 BEST VALUE ACQUISITION (BVA) RATING METHOD: Each criterion will be rated using the following adjectival rating system:

EXCEPTIONAL - Proposal exceeds requirements and demonstrates an exceptional understanding of goals and objectives of the acquisition. One or more major strengths exist. No significant weaknesses exist.

ACCEPTABLE - Offeror's proposal demonstrates an acceptable understanding of goals and objectives of the acquisition. There may be strengths and weaknesses, however strengths outweigh the weaknesses.

MARGINAL - Offeror's proposal demonstrates a fair understanding of the goals and objectives of the acquisition. Weaknesses have been found that out-balance any strengths that exist. Weaknesses will be difficult to correct.

UNACCEPTABLE - Offeror's proposal fails to meet an understanding of the goals and objectives of the acquisition. The proposal has one or more significant weaknesses that will be very difficult to correct or are not correctable.

1.2 BEST VALUE ACQUISITION EVALUATION PROCESS: All proposals will be reviewed and evaluated by an Evaluation Committee. "Best value" concepts will be used for the evaluation and award. "Best Value," means the overall combination of quality, price, and various elements of required goods and services that in total are optimal relative to a public body's needs.

1.3 BEST VALUE ACQUISITION AWARD(S): The Commonwealth may make separate awards based on the Education, Technical Assistance, and Project Liaison Categories. The Commonwealth reserves the right to make one award for all categories. Selection shall be made of two or more offeror(s) deemed to be fully qualified and best suited among those submitting best value proposals on the basis of the evaluation factors included in this solicitation, including price, if so stated. Negotiations shall be conducted with the Offeror(s) whose proposal(s) represent the most advantageous and best offer. Awards will be made on a best value basis to the Offeror(s) which, in the Commonwealth's opinion, represents the best overall combination of quality, price, and various

elements of required goods/services, as stated in this solicitation, that in total are optimal relative to the agency's needs. The Commonwealth may cancel this solicitation or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359 D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's offer as negotiated.

1.4 BEST VALUE ACQUISITION INCENTIVES: Incentives are designed to motivate vendors to surpass specific requirements of the solicitation while discouraging inefficiency and waste. The offerors' proposal should include additional benefits or rewards to the Commonwealth to encourage acceptance of their proposal. (Examples of incentives may include additional warranties, rebates or royalties, gifts-in-kind, training, advertising/marketing, etc.) Reference *Best Value Incentives* form in Attachment 2.

1.5 BEST VALUE ACQUISITION EVALUATION CRITERIA : Proposals will be evaluated using the following criteria listed in order of importance:

Technical & Organizational Approach:

Capabilities of proposed system in working with building and fire codes, inspection and tracking enforcement programs, billing systems, online payments, and versatility in working with other programs.

Past Performance:

Understanding of, and experience in, issues related to information technology, database development, and related software, hardware and peripherals.

Methodology:

Specific plans or methodology to fulfill the contract.

Qualifications of Personnel:

Qualifications of the project manager and team in working on similar projects and with state and local government.

VII. PREPROPOSAL CONFERENCE:

OPTIONAL PREBID/PREPROPOSAL CONFERENCE: An optional prebid/preproposal conference will be held at **November 21, 2006 10:00 a.m.** at the **Department of Housing and Community Development**. The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a bid/proposal, bidders/offerors who intend to submit a bid/proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

VIII. GENERAL TERMS AND CONDITIONS

REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

- A. VENDORS MANUAL
- B. APPLICABLE LAWS AND COURTS
- C. ANTI-DISCRIMINATION
- D. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. CHANGES TO THE CONTRACT
- P. DEFAULT
- Q. TAXES
- R. USE OF BRAND NAMES
- S. TRANSPORTATION AND PACKAGING
- T. INSURANCE
- U. ANNOUNCEMENT OF AWARD
- V. DRUG-FREE WORKPLACE
- W. NONDISCRIMINATION OF CONTRACTORS
- X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION
- Y. AVAILABILITY OF FUNDS
- Z. SET-ASIDES

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under “Manuals.”
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**
1. **Request For Proposals(RFP):** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
1. **To Prime Contractor:**
- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is

delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeree) to perform the services/furnish the goods and the (bidder/offeree) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeree's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeree's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeree) fails to satisfy the Commonwealth that such (bidder/offeree) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days.

- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA Business-To-Government Vendor Registration:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- c. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
 - (i) DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

Z. **SET-ASIDES**. This solicitation is set-aside for DMBE-certified small business participation only when designated "SET-ASIDE FOR SMALL BUSINESSES" in the solicitation. Small businesses must be certified by the Virginia Department of Minority Business Enterprise not later than the solicitation due date and time. DMBE-certified women- and minority-owned businesses are also considered small businesses when they have received DMBE small business certification.

IX. SPECIAL TERMS AND CONDITIONS

SECTION I

SPECIAL TERMS AND CONDITIONS INFORMATION TECHNOLOGY GOODS AND SERVICES

INDEX - SPECIAL TERMS AND CONDITIONS

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30. NONVISUAL ACCESS TO TECHNOLOGY

1. **CERTIFICATION TESTING PERIOD - SYSTEMS:** The system specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The **60** day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

CERTIFICATION TESTING PERIOD - HARDWARE: Equipment ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor equipment which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost (including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

2. **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

CONFIDENTIALITY (Contractor): The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

3. **DEFINITION - EQUIPMENT:** As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

DEFINITION - SOFTWARE: As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

4. **DEMONSTRATIONS:** By submitting a bid or proposal, the bidder or offeror certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The Commonwealth reserves the right to require bidders or offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.
5. **EQUIPMENT ENVIRONMENT:** Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.
6. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of in operability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than 3 consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within 3 days following the request for replacement.
7. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
8. **LIMITATION OF USE:** The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the Commonwealth's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the *Code of Virginia*.
9. **MAINTENANCE:** Upon expiration of the specified warranty period and at the Commonwealth's option, the contractor shall provide up to 4 additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from:

acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the Commonwealth in writing at least **60** days prior to expiration of the existing maintenance period.

10. **NEW EQUIPMENT:** Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment.
11. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule..
12. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
13. **PRODUCT SUBSTITUTION:** During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
14. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Commonwealth reserves the right to require proof of certification prior to award and at any time during the term of the contract.
15. **RELOCATION OF EQUIPMENT:** Should it become necessary to move equipment covered by the contract to another location, the Commonwealth reserves the right to do so at its own expense. If contractor supervision is required, the Commonwealth will provide prior written notice of the move at least thirty (30) days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the Commonwealth. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.
16. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional **4 one-year period(s)**, under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the **Information Technology, hardware and services** category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.

17. **REPAIR PARTS:** In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Commonwealth.
18. **SERVICE PERIOD (ROUTINE):** Contractor shall provide 24 hour toll-free phone support with a **4** hour return call response time. On-site maintenance services shall carry a **4** hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within **8** hours of the initial notification.
20. **SERVICE REPORTS:** Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.
21. **SOFTWARE UPGRADES:** The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
22. **SOFTWARE DISPOSITION:** Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license, except that the Commonwealth does reserve the right to retain one copy of the software for archival purposes when appropriate.
23. **SOURCE CODE:** In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.
24. **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.

25. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
26. **TITLE TO SOFTWARE:** By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
27. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
28. **WARRANTY OF SOFTWARE:** The contractor warrants the operation of all software products for a period of 12 months from the date of acceptance. During the warranty period, the contractor shall provide 24 hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within 4 hours of initial notification.
29. **YEAR 2000 COMPLIANT (AND ENABLEMENT) WARRANTY:** The contractor warrants that all software, firmware and hardware product(s) delivered to the Commonwealth of Virginia under any agreement, and which is used in accordance with the product documentation provided by the contractor, shall be 4-digit Year 2000 compliant (or approved enabled). All products shall accurately process all date-change data from start to finish, including, but not limited to, twentieth, twenty-first centuries and leap year calculations.

Any product provided under this Agreement discovered not to be compliant after acceptance shall be corrected by the contractor at no additional cost to the Commonwealth. Failure to correct the deficiency shall subject the contractor to default action.

The contractor shall not be responsible for correcting any product(s) (e.g., hardware, software, firmware) which were not provided under this agreement or for correcting any previously owned Commonwealth products that are used in combination with the contractor's product(s); however, if this solicitation identifies any product or sources of data to be used in combination with the product(s) delivered under the resulting agreement, the contractor shall be responsible for providing all necessary interface(s) or other appropriate means for assuring that date data output from such other product(s) or source(s) is automatically corrected before being processed by the product(s) or system provided under this agreement.

30. **NONVISUAL ACCESS TO TECHNOLOGY**: All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
- (iii) Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

SECTION II

SPECIAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

INDEX - SPECIAL TERMS AND CONDITIONS

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9. RENEWAL OF CONTRACT
10. WARRANTY

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
2. **AWARD TO OTHER THAN THE HIGHEST RANKING OFFEROR(S):** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror(s) which, in its opinion, has made the best proposal(s) and shall award the contract to that offeror; however, if the contract is up to \$100,000, the contract may be awarded to a reasonably ranked minority or woman-owned offeror, that is other than the highest ranking offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

3. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
4. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.
5. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.
6. **PREVENTIVE MAINTENANCE:** The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.
7. **PRODUCT INFORMATION:** The bidder/offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.
8. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

9. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for (one year) under the terms and conditions of the original contract except as stated in 1. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the **Information Technology, hardware and services** category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
10. **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of **1 year** following date of delivery. Should any defect be noted by the owner, the Purchasing Office will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to the Commonwealth and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

X. ATTACHMENTS:

A. Data Sheet

ATTACHMENT A

DATASHEET

1. **Qualification of Firm:** Offeror's signature on this solicitation certifies that his or her firm has the capability and capacity in all respects to satisfy all contractual requirements.
2. **Years in Business:** Indicate the length of time you have been in business providing this type of service:
_____ years _____ months.
3. **Is your firm currently registered in eVA?**
Yes _____ Under what name? _____
No _____
4. **References:** Indicate below a listing of at least three (3) references for which you have provided this type of service. One reference must be of an account of similar size to the Commonwealth of Virginia, and one reference must be of a recent client whose business you lost. Include the dates service was furnished and the name and address of the person DHCD has permission to contact. A Narrative statement shall be provided for each reference, describing the scope, size and type of services provided to each reference. **Please verify that the contact persons whom you have listed below are still employed with these firms prior to submitting their names.**

Client	Date	Address	Contact Person (w/ phone and fax number and email address)

Appendix B

SWAM (Small, Women and Minority-Owned Businesses)

Offeror Name: _____ Preparer Name: _____

Date: _____

Is your firm a **Small Business Enterprise** certified by the Department of Minority Business Enterprise?

Yes _____ No _____

If yes, certification number: _____ Certification date: _____

Is your firm a **Woman-owned Business Enterprise** certified by the Department of Minority Business Enterprise?

Yes _____ No _____

If yes, certification number: _____ Certification date: _____

Is your firm a **Minority-Owned Business Enterprise** certified by the Department of Minority Business Enterprise?

Yes _____ No _____

If yes, certification number: _____ Certification date: _____

What are your firm's total expenditures for all goods and services (not just SWAMS) during calendar year 2004: \$ _____

Instructions: *Populate the table below to show your firm's plans for participation of small, women-owned and minority-owned business enterprises in the performance of the Collection Services contract. Describe plans to involve SWAMs businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.*

Small Business Enterprise: "Small business enterprise" shall mean an independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years. Nothing in this provision prevents a program, agency, institution or subdivision from complying with the qualification criteria of a specific state program or a federal guideline to be in compliance with a federal grant or program. **For purposes of the SWAM Program, the definition of small business enterprise shall be interpreted to include all certified women-owned and minority-owned businesses.**

Woman-Owned Business Enterprise: A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified women-owned businesses are also a small business enterprise.**

Minority-Owned Business Enterprise: A business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified minority-owned businesses are also a small business enterprise.**

All small, women, and minority owned businesses must be certified by the Commonwealth of Virginia Department of Minority Business Enterprise (DMBE) to participate and be counted in the SWAM program. Certification applications are available through DMBE at 800-223-0671 in Virginia, 804-786-6585 outside Virginia, or online at www.dmbv.virginia.gov (Customer Service).

1. Plans for participation of SWAMS businesses:

SWAM Business Name & Address	SWAM Status: Small (S) Women (W) Minority (M) & DMBE Certif. # & Date	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Contract Involvement	Planned Annual Contract Dollar Expenditure Amount

Attachment C

Proprietary/Confidential Information Identification

Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of § 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected including the section of the proposal in which it is contained and the pages numbers, and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. In addition, a summary of proprietary information submitted shall be submitted on this form. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the offeror refuses to withdraw such a classification designation, the proposal will be rejected.

SECTION/TITLE	PAGE NUMBER(S)	REASON(S) WITHOLDING DISCLOSURE	FOR FROM

NOTES: